

AMENDED IN SENATE JUNE 23, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 688**

---

**Introduced by Assembly Member Pan**  
**(Coauthor: Assembly Member Mitchell)**

February 17, 2011

---

An act to add Chapter 3.5 (commencing with Section 110286) to Part 5 of Division 104 of the Health and Safety Code, relating to food and drug safety.

LEGISLATIVE COUNSEL'S DIGEST

AB 688, as amended, Pan. Food and drugs: sale.

The Sherman Food, Drug, and Cosmetic Law contains various provisions regarding the contents, packaging, labeling, and advertising of food, drugs, and cosmetics. A violation of any of these provisions is punishable as a misdemeanor.

This bill would prohibit a retailer from selling or permitting to be sold after the *expiration or “use by” or “use before”* date infant formula or baby food that is required to have this date on its packaging pursuant to federal law. It would also prohibit a retailer from selling or permitting to be sold after the *expiration or “use by” or “use before”* date an over-the-counter drug, as defined, that is required to have this expiration date on its packaging pursuant to that federal law. *This bill would make a violation of its provisions an infraction, punishable by a fine of not more than \$10 per day, calculated as prescribed.* By creating a new crime, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.



This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Chapter 3.5 (commencing with Section 110286)  
2 is added to Part 5 of Division 104 of the Health and Safety Code,  
3 to read:

4  
5 CHAPTER 3.5. EXPIRATION ~~AND USE BY~~, *USE BY, AND USE*  
6 *BEFORE DATES*  
7

8 110286. (a) A retailer shall not sell or permit to be sold after  
9 the ~~“use by”~~ *expiration or “use by” or “use before”* date infant  
10 formula or baby food that is required to have this date on its  
11 packaging pursuant to the federal act and federal regulations  
12 adopted pursuant to the federal act, including, but not limited to,  
13 Section 107.20 of Title 21 of the Code of Federal Regulations.

14 (b) A retailer shall not sell or permit to be sold after the  
15 ~~expiration date an over-the-counter~~ *or “use by” or “use before”*  
16 *date an over-the-counter* drug.

17 (c) This section shall not be construed to preclude any other  
18 action authorized by law.

19 (d) *Notwithstanding Section 111825, any retailer who violates*  
20 *this section is guilty of an infraction, punishable by a fine of not*  
21 *more than ten dollars (\$10) per day for each item sold or permitted*  
22 *to be sold after the expiration or “use by” or “use before” date.*  
23 *The fine shall be calculated based upon the number of days*  
24 *between the expiration or “use by” or “use before” date and the*  
25 *date of sale. The date of sale shall be established by evidence of*  
26 *the proof of purchase, including, but not limited to, a sales receipt.*  
27 *Notwithstanding Section 111835, the moneys from fines collected*  
28 *pursuant to this section shall be deposited in the General Fund,*  
29 *except that when fines are collected pursuant to this section by a*  
30 *local jurisdiction, the moneys collected shall be deposited into the*  
31 *general fund of the local jurisdiction.*

32 ~~(d)~~



1 (e) For purposes of this section, the following definitions shall  
2 apply:

3 ~~(1) “Baby food” shall mean the processing of canned fresh fruits~~  
4 ~~and vegetables, meats, eggs, fruit juices, cereal, formulated entrees,~~  
5 ~~and desserts and snacks using ingredients that are fresh,~~  
6 ~~preprocessed, or any combination of these, and other food~~  
7 ~~ingredients necessary for the production of infant foods.~~

8 (1) “Baby food” shall have the meaning given to “baby foods”  
9 in paragraph (c) of Section 407.81 of Title 40 of the Code of  
10 Federal Regulations.

11 (2) “Infant formula” shall have the meaning given in subdivision  
12 (z) of Section 321 of Title 21 of the United States Code.

13 (3) “Over-the-counter drug” means a nonprescription drug  
14 regulated by the federal Food and Drug Administration that is  
15 required to have an expiration date on its packaging pursuant to  
16 the federal act and federal regulations adopted pursuant to the  
17 federal act, including, but not limited to, Section 211.137 of Title  
18 21 of the Code of Federal Regulations.

19 SEC. 2. No reimbursement is required by this act pursuant to  
20 Section 6 of Article XIII B of the California Constitution because  
21 the only costs that may be incurred by a local agency or school  
22 district will be incurred because this act creates a new crime or  
23 infraction, eliminates a crime or infraction, or changes the penalty  
24 for a crime or infraction, within the meaning of Section 17556 of  
25 the Government Code, or changes the definition of a crime within  
26 the meaning of Section 6 of Article XIII B of the California  
27 Constitution.